IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.27 of 2007

Date of decision: **20.6.2007**

Bhag Chand Petitioner

Versus

State of H.P. & Ors. Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, A.C.J.

The Hon'ble Mr. Justice *V.K. Ahuja, J.*

Whether approved for reporting[1]? No.

For the petitioner: **Mr.Vinay Kuthiala, Advocate.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Deputy Advocate General, for respondents No. 1 to 3.**

Mr. B.B. Vaid, Advocate, for respondent No. 4.

Per Deepak Gupta, A.C.J. A(Oral):

The petitioner filed his nomination paper for election to the post of Pradhan, Gram Panchayat, Namhong,Tehsil Anni, District Kullu. According to the petitioner, he belongs to Koli Caste, which has been duly notified as Scheduled Caste under the provisions of the Constitution. Alongwith this nomination paper, the petitioner attached a certificate issued by the Executive Magistrate, Sub Tehsil Anni, District Kullu on 12.11.1999, in which it has been certified that the petitioner is a member of the Scheduled Caste.

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[1] Whether the reporters of Local Papers may be allowed to see the Judgment? Yes.

After the petitioner filed his nomination paper, objections to the nomination paper were filed by one Het Ram, respondent No. 4. According to Het Ram, the petitioner does not belong to the Scheduled Caste category and belong to the caste of “Barla” or “**Banarala**” and not to the Koli Caste. On consideration of the application, the Returning Officer passed an order rejecting the nomination paper of the petitioner. The main ground taken was that the applicant had not produced a Schedule Caste certificate, which had been issued within the six preceding months. The Returning Officer directed the petitioner to produce a new certificate or to get the same renewed by the competent authority. Since the petitioner did not do so, his nomination paper was rejected. Respondent No. 4 was thereafter declared elected as Pradhan, Gram Panchayat Namhong.

The petitioner had filed this writ petition prior to the completion of the election process. As far as the challenge to the election is concerned, we are of the considered view that keeping in view the bar under Article 243-O (b) of the Constitution of India, the election of respondent No. 4 as Pradhan of Panchayat cannot be called in question in any legal proceedings, except an election petition filed under the H.P. Panchayati Raj Act. This prayer is therefore rejected.

However, we can understand the apprehension being expressed by the learned counsel for the petitioner that in view of the orders of the Returning Officer, his client may not be considered to be a member of the Schedule Caste. As noted above, the Returning Officer has not given any clear cut finding on

the question as to whether the petitioner is a member of the Scheduled Caste or not. He has only rejected his candidature on the ground that the certificate produced by him had not been issued within the last six. The certificate issued on 12.11.1999 is a certificate issued by a duly constituted authority and shall continue to remain in force unless the same is set aside in accordance with law. With these observations, the writ petition is disposed of.

CMPs No.46,75, and 721 of 2007:

In view of the orders passed in the main petition, all these applications stand disposed of.

(Deepak Gupta)
Acting Chief Justice

June 20, 2007
(BSS)

(V.K. Ahuja),
Judge